

REMARKS

Applicants have carefully considered the April 24, 2007 Office Action, and the amendments above together with the comments that follow are presented in a bona fide effort to address all issues raised in that Action and thereby place this case in condition for allowance. Claims 1-19 were pending in this application. Claims 8-19 have been withdrawn from consideration pursuant to the provisions of 37 C.F.R. § 1.142(b).

In response to the Office Action dated April 24, 2007, claim 1 has been amended and new claims 20-21 have been added. Adequate descriptive support for the present Amendment should be apparent throughout the originally filed disclosure as, for example, in the written description of the specification, including page 24, lines 10-12; Fig. 1; page 42, lines 1-3; and page 51, line 15. Applicants submit that the present Amendment does not generate any new matter issue. Entry of the present Amendment is respectfully solicited. It is believed that this response places this case in condition for allowance. Hence, prompt favorable reconsideration of this case is solicited.

Claim 1 was objected to for a minor informality. Reconsideration and withdrawal of the objection are solicited in view of the foregoing amendment to claim 1 to address the typographical error.

Claims 1-3 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Sun et al. (U.S. Patent No. 5,861,019, hereinafter "Sun"). Applicants traverse.

Applicant stresses that the factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claimed invention, such that the identically claimed invention is placed into the recognized possession of one having

ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). There are significant differences between the claimed inventions and the invention disclosed by Sun that would preclude the factual determination that Sun identically describes the claimed subject matter within the meaning of 35 U.S.C. § 102.

As described in the specification at page 42, lines 1-3, the CPU 16c instructs the communication device 14 to start a transmission operation. In this way, the communication device 14 performs the radio transmission operation in response to the instructions from the CPU 16c. Thus, it should be readily apparent that the radio communication device of the present claimed subject matter (represented by amended claim 1) includes the transmission circuit for performing the transmission operation.

The Examiner appears to consider that antenna 28 (a patch antenna layer 30) of Sun as the radio communication device of the present invention. However, the patch antenna layer 30 of Sun is an antenna. Thus, the patch antenna layer 30 cannot be considered a circuit board, much less part of a radio communication device including a transmission circuit as presently claimed.

Sun describes at col. 9, lines 26-33 that the antenna 28 is connected to a transceiver comprising a transmitter 42 and a receiver 44. Thus, it could arguably be considered that the combination of the antenna 28 and the transceiver of Sun corresponds to a radio communication device. However, although Sun, at Fig. 15, shows antenna 28 provided outside of a ground layer 48, the transceiver is not provided outside of the ground layer 48. It appears that the transceiver (connected to the antenna 28) is provided inside of the ground layer 48. In other words, Sun's antenna 28 and transceiver are arranged on the opposite side of the ground layer 48 (a ground conductor layer) and a plurality of circuit boards (a stacked-layered circuit board).

The Examiner appears to regard the various circuit elements accommodated in a housing 13 (a microcomputer, a digital state machine, various sensors and the like recited at col. 8, lines 30-54) as the electrocardiogram measurement device. In this case, the transceiver, which is considered as part of the radio communication device, and the electrocardiogram measurement device are arranged inside of the ground layer 48 within housing 13. That is to say, in the implantable cardiac pacemaker of Sun, the electrocardiogram measurement device and part of the radio communication device are arranged on the same side of the ground layer 48. Therefore, the ground layer 48 does not serve to isolate the electrocardiogram measurement device from the radio communication device.

With the present claimed subject matter, however, the electrocardiogram measurement device and the radio communication device are not arranged on the same side of the stacked-layered circuit board including the ground conductor layer. Accordingly, the structure of the implantable cardiac pacemaker of Sun, relied upon by the Examiner, is completely different from the structure of the present claimed portable electrocardiograph having an electrocardiogram measurement device arranged on one side of the stacked-layered circuit board, and the radio communication device arranged on the other side of the stacked-layered circuit board, and the ground conductor layer disposed so that the electrocardiogram measurement device and the radio communication device are isolated from each other.

The above argued differences between the claimed device and the applied art undermines the factual determination that Sun discloses the portable electrocardiograph identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 U.S.P.Q. 86 (Fed. Cir. 1986). Applicant, therefore, submits

that the imposed rejection of claims 1-3 under 35 U.S.C. § 102 for lack of novelty as evidenced by Sun is not factually viable and, hence, solicit withdrawal thereof.

Dependent claims 4-7 have been rejected under 35 U.S.C. § 103 as being unpatentable over Sun. Applicants respectfully traverse.

Applicant incorporates herein the arguments previously advanced in traversal of the rejection of claims 1-3 under 35 U.S.C. § 102 predicated upon Sun. Dependent claims 4-7 are free from the applied art in view of their dependency from independent claim 1.

Accordingly, it is believed that all pending claims are now in condition for allowance. Applicant therefore respectfully requests an early and favorable reconsideration and allowance of this application. If there are any outstanding issues which might be resolved by an interview or an Examiner's amendment, the Examiner is invited to call Applicant's representative at the telephone number shown below.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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